

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

In re:
IKO ROOFING SHINGLE
PRODUCTS LIABILITY LITIGATION

Case No.: 09-md-2104
MDL Docket No. 2104
ALL CASES

ORDER
AGREED ORDER FOR PRESERVATION OF SHINGLES

This matter comes before the Court upon Plaintiffs' and Defendants' Joint Motion for Order for Preservation of Shingles. Having considered the Joint Motion and the record, and being otherwise fully advised the Court orders as follows:

I. SCOPE OF ORDER

This Order does not address, limit, or determine the relevance, discoverability, or admission into evidence of any Shingle, regardless of whether the Shingle is required to be preserved pursuant to the terms of this Order.

II. DEFINITIONS

A. Parties. This Order shall apply to any persons and entities that are, or later become, parties to these coordinated MDL proceedings (collectively, the "Parties").

B. Shingles. Under this Order, the term "Shingles" shall mean all organic shingles in the possession, custody or control of the Parties.

C. Preservation. The Parties and their counsel shall take reasonable and proportionate steps to preserve Shingles within their possession, custody, or control. Under this

Order, the term “preserve” includes taking reasonable and proportionate steps to prevent the partial or full destruction or alteration of Shingles.

III. SHINGLES REQUIRED TO BE PRESERVED

A. During the pendency of this litigation, including any appeals, or until such other time as agreed to by the Parties, the Parties shall preserve the following Shingles in their possession, custody, or control, except as otherwise stated.

1. Inspection/Removal of Shingles from Plaintiffs’ Properties

Plaintiffs shall afford Defendants the right to inspect and/or test Shingles from their properties during any period of fact discovery in this consolidated action (the “Inspection Time Period”), provided Defendants provide prior reasonable notice to Plaintiffs’ Counsel. If Plaintiffs intend to remove any Shingles on their properties during the Inspection Time Period, Plaintiffs will provide Defendants with 30 days prior written notice and will give Defendants access to their property and Shingles within that 30 day period.

2. Inspection and Removal of a Portion of Defendants’ Shingles

Defendants shall preserve any Shingle samples that are submitted to them as part of their warranty program and provide Plaintiffs the opportunity to inspect and a remove a portion or sample of the Shingles pursuant to the following protocol:

- a. Defendants shall maintain any such Shingle samples on pallets in a warehouse, organized by date.
- b. The claim number associated with the Shingle samples shall be written on each Shingle.
- c. Upon prior notice to Defendants’ Counsel, Plaintiffs’ Counsel may inspect the Shingle samples at the warehouse.

- d. Plaintiffs may remove and retain a portion of the Shingle sample. A person on behalf of Plaintiffs may cut the Shingle in half vertically from any whole Shingle sample, retaining any Release Tape (if it is a self-sealing product).¹ If the Shingle sample is not a whole Shingle, then a person on behalf of Plaintiffs may cut an 8" x 12" section vertically, retaining any Release Tape (if it is a self-sealing product). The claim number associated with the Shingle shall be written on the cut section along with the date that Plaintiffs obtained the portion of the Shingle.

IV. IMPLEMENTATION AND/OR MODIFICATION OF ORDER

A. The Parties shall communicate the existence and substance of this Order to those employees responsible for carrying out the Parties' obligations hereunder.

B. Notwithstanding a Party's obligation to preserve Shingles in accordance with this Order, a Party may send written notice to the other Parties of its intention to take action pursuant to routine policies and programs that would result in Shingles being impacted, not retained, destroyed, lost or otherwise altered. Service of notice of such intention must be provided to Plaintiffs' Liaison Counsel as well as Defendants' Liaison Counsel. If, within 60 days after receiving written notice from another Party that specified Shingles will be destroyed, lost, or otherwise altered pursuant to routine policies and programs, a Party fails to indicate in writing its objection, then that Party shall be deemed to have agreed to such destruction or alteration.

C. The Parties are directed to confer to resolve questions as to what Shingles are outside the scope of this Order or otherwise need not be preserved. Counsel for the Parties may stipulate and agree in writing that specific Shingles need not be preserved.

D. If the Parties are unable to agree as to what Shingles (1) are outside the scope of this Order, or (2) may be destroyed, lost, or otherwise altered pursuant to routine policies and

¹ The Shingle shall be cut starting from the top of the Shingle down through the bottom, assuring that all parts of the Shingle section can be preserved for testing

programs, or (3) otherwise need not be preserved, any Party may apply to this Court for clarification or relief from this Order upon reasonable notice.

Dated: May 7, 2010

s/ Harold A. Baker

The Honorable Harold A. Baker
United States District Judge

AGREED TO BY:

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CHI99 5217477-2.085063.0011